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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91184213
Party	Defendant Direct Access Technology, Inc.
Correspondence Address	MICHAEL C. OLSON 1400 BRISTOL STREET N SUITE 270 NEWPORT BEACH, CA 92660 UNITED STATES molson@lawyer.com
Submission	Testimony For Defendant
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Date	12/22/2009
Attachments	wang.signed.dat.pdf (23 pages)(603726 bytes)

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD
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5 GALAXY METAL GEAR, INC.)
6 Opposer,)
7 vs.) OPPOSITION NO. 91184213
8 DIRECT ACCCESS TECHNOLOGY, INC.,)
9 Applicant.)
10)
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13

14 DEPOSITION OF PATRICK WANG

15 Monday, November 2, 2009

16 Newport Beach, California
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22 REPORTED BY: CHRISTINE FOLEY-GRUBERT
23 CSR 13357
24
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6 Opposer,)
7 vs.) OPPOSITION NO. 91184213
8 DIRECT ACCESS TECHNOLOGY, INC.,)
9 Applicant.)
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15 Deposition of PATRICK WANG, taken before
16 Christine Foley-Grubert, a Certified Shorthand Reporter for
17 the State of California, with principal office in the County
18 of Orange, commencing at 10:05 a.m., Monday,
19 November 2, 2009, at the Law Office of Michael C. Olson,
20 located at 1400 Bristol Street North, Suite 270,
21 Newport Beach, California.
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1 APPEARANCES OF COUNSEL:.

2
3 FOR THE APPLICANT, Direct Access Technology, Inc.:
4

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Examination by:

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Mr. Olson

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1 PATRICKWANG,
2 called as a witness by and on behalf of the Applicant,
3 Direct Access Technology, Inc., having been duly sworn by
4 the Certified Shorthand Reporter, was examined and testified
5 as follows:
6

7 MR. OLSON: Let the record reflect the date and
8 time for taking the deposition of Patrick Wang for use in
9 the pending TTAB action. The Opposer Metal Gear's attorney
10 is not here and I spoke with them this morning and they said
11 no one would be showing for the deposition, so we are going
12 to go forward in their absence.
13

14 EXAMINATION

15 BY MR. OLSON:

16 Q Can you state your name for the record, please?

17 A Patrick Wang.

18 Q Mr. Wang, where are you employed?

19 A DAT.

20 Q DAT is what?

21 A It's a --

22 Q DAT's full, legal name is what?

23 A Direct Access Technology, Inc.

24 Q You refer to it as "DAT"?

25 A Yes.

1 Q How long have you been employed at DAT?

2 A Since August, 1996.

3 Q What is your current job title?

4 A VP of sales and marketing.

5 Q What are your job duties as the VP of sales and
6 marketing?

7 A I set the market channels, I also do the product
8 managing.

9 Q So part of your job, then, is finding new product
10 to sell?

11 A Yes.

12 Q And part of your job is contacting customers to get
13 them to buy product?

14 A Yes.

15 Q What kind of product does DAT sell?

16 A USB products, accessories and peripherals.

17 Q Does it sell solely in the computer industry or is
18 it involved with products from other --

19 A Computer industry.

20 Q Is one of the products that DAT sells computer hard
21 drive enclosures?

22 A Yes.

23 Q Can you describe for the the record, what is a
24 computer hard drive enclosure?

25 A Enclosure with a PCB, which is hooked up to the

1 external hard drive and once you install the hard drive, you
2 connect the enclosure into your PC externally.

3 Q Does the product that DAT sells come with a hard
4 drive or is that something that a purchaser has to acquire
5 separately?

6 A The purchaser will acquire separately or the end
7 user will put it in.

8 Q Basically the product consists of a case that will
9 hold a hard drive and a printed circuit board or PC board
10 and some kind of cable or other means that connect to the
11 computer?

12 A Yes.

13 Q Once you put a hard drive in there, it's basically
14 an external hard drive; right?

15 A Yes.

16 Q Are there any metal gears in the product?

17 A Yes.

18 Q Other than a PCB and external hard drive, are there
19 any moving parts --

20 A No.

21 Q Are there any gears inside there?

22 A No.

23 Q The name of the product is called Metal Gear --

24 A Excuse me a second.

25 Q The trademark on the product is Metal Gear?

1 A Yes.

2 Q Do you sell products under any other brand name?

3 A Yes. U Storage, I dot connect.

4 Q Do you sell any enclosures under brand names, other
5 than Metal Gear?

6 A We also sell a five and a quarter inch end
7 U Storage.

8 Q The U Storage enclosure, is the trademark right on
9 the enclosure?

10 A Yes.

11 Q Does the enclosure also say Metal Gear on it?

12 A The three and a half inch, yes.

13 Q The U Storage marked enclosure, does it also say
14 Metal Gear on it?

15 A No.

16 Q Is Metal Gear used on the U Storage enclosure,
17 either on the packaging or on the product itself?

18 A No.

19 Q Are there any other companies that market hard
20 drive enclosures?

21 A A lot of them.

22 Q How many other companies are there that market hard
23 drive enclosures?

24 A At least 10, 20.

25 Q When did DAT start marketing hard drive

1 enclosures?

2 A 2000.

3 Q Under what brand name was it being marketed?

4 A In 2000, a generic brand, doesn't have a name on
5 it, but you will have our company logo and also the city.

6 Q On the product itself, there was no brand name?

7 A No.

8 Q But on the packaging, it had your company name?

9 A Yes.

10 Q Who were you buying product from, or who was DAT
11 buying product from at that time?

12 A Welland.

13 Q Spell that.

14 A W-e-l-l-a-n-d.

15 Q When did you first start buying enclosures from
16 Data Stor?

17 A 2001.

18 Q Data Stor is, D-a-t-a, S-t-o-r?

19 A Yes.

20 Q Did you first start buying products in 2001 or were
21 you negotiating to buy products?

22 A Negotiating with Data Stor.

23 Q Was Data Stor in the hard drive enclosure business
24 when you first met them?

25 A No.

1 Q What business were they in?

2 A Broken ^(P.W.) IC's. Doing other products besides
3 enclosures. I am not sure.

4 Q When you say, "IC's", you mean integrated circuitry
5 chips?

6 A Yes.

7 Q How did it come that Data Stor got involved in the
8 enclosure business?

9 A Basically they come to me and ask me what to
10 produce to help them stay alive in Taiwan, so I gave them
11 the idea we are doing very well in enclosures and you may
12 want to look there, and I can give you pointers on how to
13 make the enclosures for us.

14 Q Who gave Data Stor the specifications for the
15 products?

16 A I did.

17 Q When did Data Stor first start selling to you or
18 manufacturing for you these enclosures?

19 A 2002.

20 Q The enclosures that you were buying from Data Stor,
21 did they have a brand name on them?

22 A My brand.

23 Q What brand name is that?

24 A Metal Gear.

25 Q Can you tell me the process of how you decided to

1 use Metal Gear as a brand name?

2 A Can you explain that?

3 Q Sure.

4 Did you select Metal Gear from a list of five or
5 six names, or did someone suggest Metal Gear to you, or how
6 did that happen?

7 A I played with the names. I came with five to six
8 different names, and then what I do is I go through each one
9 and pick the one that I think is the best name to put on the
10 enclosures.

11 Q Is that how you came up with the U Storage name,
12 also?

13 A Yes.

14 Q So who was the one who decided that Metal Gear
15 would be used on the enclosures that you started buying from
16 Data Stor?

17 A I did.

18 Q The packaging that comes with the product, who
19 created the art work for that?

20 A We did.

21 Q Someone on behalf of DAT?

22 A Yes.

23 Q Does the packaging have any company's name on it?

24 A Yes.

25 Q Whose name?

1 A DAT.

2 Q Is Data Stor's name on any of the packaging from
3 the enclosures that you bought from Data Stor?

4 A No.

5 Q By the way, did your relationship at some point
6 terminate with Data Stor?

7 A Yes.

8 Q When did DAT terminate the relationship?

9 A Around 2005.

10 Q While the relationship was in place with Data Stor,
11 did DAT buy enclosures from any other companies?

12 A Yes.

13 Q How many other companies was DAT buying from, apart
14 from Data Stor?

15 A Three.

16 Q So up until 2005, DAT was buying from a total of
17 four different -- was buying hard drive enclosures from a
18 total of four different companies?

19 A Yes.

20 Q And they were buying from four different companies
21 all at the same time?

22 A Yes.

23 Q And what was the brand name that was on these
24 enclosures?

25 A Metal Gear.

1 Q Is it true, then, that DAT was buying Metal Gear
2 enclosures from four different companies all at the same
3 time?

4 A Yes.

5 Q Did DAT pay for the tooling that was used to build
6 these enclosures?

7 A Yes.

8 Q Who did DAT consider to be the owner of the tooling
9 that they used to make the enclosures?

10 A Can you rephrase that?

11 Q Sure.

12 Who owned the tooling, to your understanding, that
13 these other companies were using to make product for you?

14 A DAT.

15 Q Did DAT have any kind of agreement with these other
16 companies regarding their sales of enclosures in the
17 United States?

18 A Yes.

19 Q What was DAT's understanding of the -- strike that.
20 You negotiated the deals with these other
21 companies, didn't you?

22 A Yes.

23 Q What was your understanding of the exclusivity
24 agreement that DAT had with these other companies?

25 A We provide them the specs, how to make the product

1 for us, only for us, and also have our brand name on it.

2 Q So did you consider you had an agreement with these
3 other people or companies that were supplying the Metal Gear
4 enclosures to you, that they would not compete with you in
5 the United States?

6 A Of course.

7 Q Did DAT market these or promote these products on
8 its website?

9 A Yes.

10 Q Metal Gear enclosures are one of the products on
11 your company's web or your employer's website?

12 A Yes.

13 Q Does DAT sell these products directly to the end
14 user?

15 A No.

16 Q Who does DAT sell to?

17 A Resale channels.

18 Q Had there been occasion where -- strike that.

19 Does your company give any warranty in connection
20 with this product --

21 A Yes.

22 Q What is the warranty?

23 A One year.

24 Q Is it a written warranty?

25 A Yes.

1 Q Is there a warranty card in the product?

2 A Not in the product.

3 Q On the packaging?

4 A Yes.

5 Q Whose name is on the product that the end user
6 should contact if there is a warranty problem?

7 A Our company.

8 Q Is there any mention in the product of Data Stor,
9 either on the product or the packaging or any inserts inside
10 the packaging?

11 A No.

12 Q Since 2005, has Data Store ever complained to you
13 or sent you a letter saying you cannot use the Metal Gear
14 mark on your products?

15 A No.

16 Q Do you know what "OEM" means?

17 A Original equipment manufacturer.

18 Q Did DAT consider itself to be in an OEM
19 relationship with these other four companies that you were
20 buying from?

21 A Yes.

22 Q When DAT was supplying these specifications to
23 Data Stor and these other three factories and identifying
24 the brand name to be put on the product and providing the
25 art work for the product, DAT believed that its relationship

1 was that of an OEM?

2 A Yes.

3 Q Did any of the other 10 or 20 manufacturers use
4 Metal Gear as a trademark?

5 A No.

6 Q Did any of them describe their products as
7 Metal Gear, even though they used a different trademark?

8 A No.

9 Q Were you familiar with the hard drive enclosure
10 market prior to when you first started dealing with
11 Data Stor?

12 A Yes.

13 Q Were any of the companies using Metal Gear on hard
14 drive enclosures prior to you dealing with Data Stor?

15 A No.

16 Q Who was the first company to sell in the
17 United States, enclosures with Metal Gear?

18 A We do.

19 Q DAT was?

20 A DAT does.

21 Q Did you authorize, you personally authorize, the
22 filing of the application to trademark Metal Gear?

23 A Yes.

24 Q You know that in the application a claim is made
25 that the mark is owned by DAT?

1 A Yes.

2 Q Direct Access Technology?

3 A Yes.

4 Q Did you authorize the making of the claim that DAT
5 owns the trademark?

6 A Yes.

7 Q Why did you make that authorization?

8 A It's our brand.

9 Q At the time the application was filed, do you
10 believe that Metal Gear was DAT's trademark?

11 A Yes.

12 Q How about today?

13 A Still is.

14 Q Why do you believe it's DAT's trademark?

15 A Because we came up with the brand name and we
16 contact the manufacturer to manufacture product for us under
17 the brand name.

18 Q Who set the specifications for the product?

19 A I did. DAT did.

20 Q Did you personally come up with the specifications
21 for the product?

22 A Yes.

23 Q When people buy enclosures or your customers call
24 you to order enclosures, how do they place their orders?

25 A Model numbers or by telling us what description it

1 is. For example, 2.0, lighted version or a combo version.

2 That is how they order from us.

3 Q Do any of them order by the trademark Metal Gear?

4 A No.

5 MR. OLSON: Let's take a short break here and I
6 will go over my notes and we might be all finished.

7 THE WITNESS: Okay.

8 (Break taken.)

9 BY MR. OLSON:

10 Q Mr. Wang, let me cover a little background I forgot
11 to cover before.

12 Did you attend college?

13 A Yes.

14 Q What college did you attend?

15 A UCSD.

16 Q University of California San Diego?

17 A Yes.

18 Q What was your major?

19 A Electrical Engineering with minor in Math.

20 Q Did you get a degree?

21 A Yes.

22 Q When?

23 A 1988.

24 Q What was your degree in?

25 A EE and minor in Math.

1 Q Do you have any formal education after '88?

2 A I went to UCLA for my Master's Degree.

3 Q When was that?

4 A Around '89.

5 Q Did you get a Master's?

6 A No, I don't.

7 Q What was your study?

8 A Electrical Engineering.

9 Q How many years have you been working in the

10 computer industry?

11 A Since 1990.

12 Q How many years have you been working in sales?

13 A Since 1990.

14 Q And the sales work you did, was it to end users or

15 was it --

16 A To resale channels.

17 Q Same as you're doing now?

18 A Yes.

19 Q By "resale channels", are you talking about

20 distributors of product?

21 A Yes.

22 Q Let me ask you about Metal Gear.

23 Does the term Metal Gear describe any function of

24 the product?

25 A No, not at all.

1 Q Does it describe any feature of the product?

2 A No.

3 Q There are no moving parts in the enclosure;
4 right?

5 A No.

6 Q Is that correct, there are no moving parts?

7 A No moving parts.

8 Q Are there any gears in the product?

9 A No.

10 MR. OLSON: That is all I have.

11 (Deposition concluded at 10:35 a.m.)

12 (Signature to be provided pursuant to Code.)

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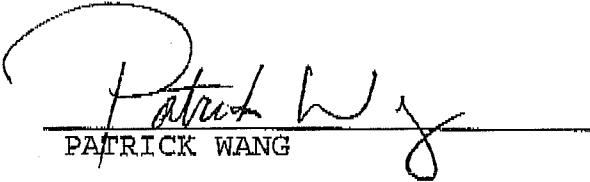
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* * *

I, PATRICK WANG, do solemnly declare under penalty of perjury that the foregoing is my deposition under oath; that these are the questions asked of me and my answers thereof; that I have read same and have made the necessary corrections, additions, or changes to my answers that I deem necessary.

In witness thereof, I hereby subscribe my name this 14 day of December, 2009.



PATRICK WANG

1 CERTIFICATION

2 OF

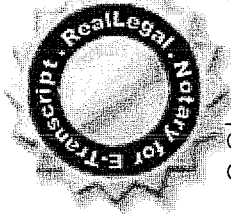
3 CERTIFIED SHORTHAND REPORTER

4
5 I, the undersigned, a Certified Shorthand Reporter of
6 the State of California, do hereby certify:

7 That the foregoing proceedings were taken before me
8 at the time and place set forth; that any witnesses in the
9 foregoing proceedings, prior to testifying, were placed
10 under oath; that a verbatim record of the proceedings was
11 made by me using computer-aided machine shorthand which was
12 thereafter transcribed under my direction; further, that the
13 foregoing is an accurate transcription thereof.

14 I further certify that I am neither financially
15 interested in the action nor a relative or employee of any
16 attorney of any of the parties.

17 IN WITNESS WHEREOF, I have hereunto subscribed my
18 name this 12th day of November, 2009.



Christine Foley-Grubert
CHRISTINE FOLEY-GRUBERT
Certified Shorthand Reporter No. 13357